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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

**IN RE AIR CRASH AT SAN FRANCISCO,
CALIFORNIA, ON JULY 6, 2013,**

JINHUA YANG and JINGTAO XIE, as Guardians
Ad Litem and Custodial Parents of J.X. a minor

Plaintiffs,

vs.

ASIANA AIRLINES, INC., a corporation; and THE
BOEING COMPANY, a corporation

Defendants.

MDL No. 2497

This Document Relates to:

Yang, et al. v. Asiana Airlines, Inc., et al., Case
No. 13-cv-5941-YGR

**DECLARATION OF MARC S. MOLLER IN
SUPPORT OF YANG/XIE PLAINTIFFS'
MOTION FOR APPROVAL OF MINOR'S
COMPROMISE**

1 I, Marc S. Moller, declare:

- 2 1. I am an attorney licensed to practice in New York and am counsel of record for the Yang/Xie
3 plaintiffs in this case.
- 4 2. This declaration is made in support of the Yang/Xie Plaintiffs' Motion for Approval of Minor's
5 Compromise. If called as a witness, I could and would be competent to testify under oath to the
6 facts below, which are personally known to me.
- 7 3. J.X. (the "minor") is a Chinese citizen and resident. J.X.'s date of birth is [REDACTED].
- 8 4. J.X. sustained minor physical and emotional injuries in the July 6, 2013 Asiana Airlines crash.
9 All of her injuries have resolved and she is neither receiving treatment for any injuries resulting
10 from the crash nor has any plans to seek treatment in the future.
- 11 5. Through her natural parents and guardians ad litem, Jinhua Yang and Jingtao Xie, an agreement
12 has been reached to settle all claims on behalf of J.X. against Asiana Airlines and the Boeing
13 Company. This agreement is similar to the settled claims of many other plaintiffs or claimants
14 who either received no injuries or very minor injuries in the subject crash. There is United States
15 jurisdiction over this claim, which arose out of incidents occurring in this judicial district.
- 16 6. The terms of the settlement are that a fee of [REDACTED] percent will be charged against the [REDACTED] gross
17 settlement amount less expenses of \$[REDACTED]. Therefore, net recovery is defined as [REDACTED]
18 minus [REDACTED] (attorneys' fees and return of disbursements) plus a [REDACTED] advance upon
19 which no attorneys' fees were charged less payment for a medical lien of [REDACTED], for a total net
20 recovery of [REDACTED].
- 21 7. Attached hereto as Exhibit 1 is a true and correct copy of the release and settlement agreements
22 for J.X.
- 23 8. The undersigned counsel represents one hundred and one (101) individuals who were passengers
24 aboard the subject flight. Costs that were common to all clients were split equitably among them
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1 including, for example document reproduction, postage, participation in a Jury Focus Group and
2 court costs incurred in the litigation filed against the Boeing Company and Asiana Airlines as
3 well as the costs incurred by counsel when travelling to meet with clients and their families
4 residing in China or elsewhere in Asia. That last category of costs (travel to Asia) was split
5 equitably among all clients with whom counsel met on any given trip. J.X. was also charged
6 individually for those costs associated solely with her case, such as translation work in explaining
7 various legal documents, settlement proposals and settlement proceeds distribution options. The
8 individual and consolidated expenses for J.X. totaled [REDACTED]. In addition, counsel filed a
9 protective action in Korea, which accounted for a one-time expense of [REDACTED] and arranged and
10 paid for counseling for J.X. which accounted for an additional [REDACTED] in expenses. The total case
11 expenses assessed to J.X. came to [REDACTED].

12
13
14 9. The attorneys' fees for J.X. are [REDACTED] of the [REDACTED] gross settlement amount less expenses of
15 \$[REDACTED] or \$[REDACTED]. No attorneys' fees were charged against the advance payment of
16 [REDACTED].

17 10. Because J.X. is a minor, we worked with her natural parents and guardians ad litem to determine
18 a satisfactory method for protecting the proceeds of the settlement for J.X. until she reaches the
19 age of maturity in [REDACTED].

20 11. J.X.'s natural parents and guardians ad litem were provided information about structured
21 settlements.

22
23 12. Given that in just over two years J.X. will be entitled to access her settlement funds, which she
24 intends to use in connection with education expenses, the annuity structures were not to her
25 benefit, as the cost would exceed the additional financial returns. J.X.'s natural parents and
26 guardians ad litem therefore ultimately declined to purchase an annuity with the net settlement
27 proceeds.
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1 13. I had several conversations with attorneys and bankers in China about the possibility of creating a
2 trust or other account or savings vehicle for J.X. in China, but was told by each person with
3 whom I consulted that there was no way to protect the proceeds of such an account from access
4 by the minor's parents and guardians.

5
6 14. Based on my substantial research and work on this issue, I believe that the only non-annuity
7 vehicle through which the net settlement proceeds can be protected from anyone other than J.X. is
8 to deposit them in a certificate of deposit or trust account for J.X. with a United States financial
9 institution in an account that would be preserved until J.X.'s eighteenth birthday, [REDACTED]
10 [REDACTED] at which time it would be released.

11 15. Because J.X. is not a United States citizen or resident, she cannot maintain a United States
12 depository bank account.

13 16. I believe that maintaining the settlement proceeds in an FDIC insured account with a United
14 States financial institution until [REDACTED] is reasonable, appropriate and in the best
15 interests of J.X.
16

17 17. I and other attorneys in my firm presented J.X.'s natural parents and guardians ad litem two non-
18 annuity options: (1) an interest-bearing certificate of deposit to be purchased and held by
19 Kreindler & Kreindler LLP in trust for J.X. until she turns 18; or (2) a specially-designated trust
20 account with J.P. Morgan Chase Bank, N.A. under the primary attorney escrow account of
21 Kreindler & Kreindler LLP (with Kreindler & Kreindler acting as the trustee of the account)
22 which would generate some interest and dividends. Under either scenario, Kreindler & Kreindler
23 LLP advised the Yang/Xie plaintiffs that it would provide them copies of all bank statements and
24 any other relevant banking information. After due consideration, the Yang/Xie plaintiffs selected
25 the second option.
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27 18. Attached hereto as Exhibit 2 is a true and correct copy of a letter from J.P. Morgan Chase Bank,
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1 N.A. confirming that it can open a specially-designated interest-bearing trust account with
2 Kreindler & Kreindler LLP acting as trustee of the account ton behalf of the individual, which in
3 this case would be the minor J.X.

4 I declare under penalty of perjury that the foregoing is true and correct of my own personal
5 knowledge.
6

7 Dated: April 26, 2016

8 /s/
9 Marc S. Moller